

SUPPORT FOR THE AMENDMENT

Support for the amendment to claim 9 is found on page 5, lines 3-6.

No new matter would be added to this application by entry of this amendment.

Upon entry of this amendment, claims 1-19 will remain active in this application with claims 1-7 and 9-16 being under active consideration.

REQUEST FOR RECONSIDERATION

The present invention is directed to an oil-cooked or baked potato.

Applicants wish to thank Examiner Becker for the helpful and courteous discussion held with their U.S. representative on July 19, 2004. At that time, Applicants' U.S. representative argued that the cited reference failed to disclose or suggest an oil-cooked or baked potato in which the diglyceride component of the oil contained as constituent fatty acids, 15-100% by weight of an ω 3 unsaturated fatty acid having less than 20 carbon atoms. The following is intended to expand upon the discussion with the Examiner.

Oil cooked or oil baked potatoes are very popular in American diets, often in the form of potato chips and fried potatoes. Issues as to storage stability and taste are of considerable importance. Accordingly, oil-cooked or baked potatoes having good texture and storage stability are sought.

The present invention addresses this problem by providing for oil-cooked or oil-baked potato which comprises 3-50% by weight of an oil or fat composition comprising 2 wt% or less of monoglyceride and 15 to < 50 wt% of a diglyceride, **the diglyceride** having, as a constituent fatty acid, 15-100% of an ω 3 unsaturated fatty acid having less than 20 carbon atoms. Applicants discovered that such an oil or fat composition provides for an oil-cooked or baked potato of good flavor and storage stability. Such an oil-cooked or oil-baked potato is nowhere disclosed or suggested in the cited prior art of record.

The rejections of Claims 1-7 and 9-14 under 35 U.S.C. § 102(b) and of claims 15-16 under 35 U.S.C. § 103(a) over Yokomichi et al. U.S. 5,504,405 as evidenced by Applicants' disclosure at page 1, line 25 and Fennema [Food Chemistry] are respectfully traversed.

Yokomichi fails to disclose or suggest an oil for a fat composition in which the diglyceride component has as a constituent fatty acid, 15-100 % of an ω 3 unsaturated fatty acid having less than 20 carbon atoms.

Yokomichi et al. describes a frying oil or fat composition comprising no more than 4 wt.% of an emulsifier (col. 2, lines 31-34). The frying oil is described beginning at col. 8, line 1 as preferably containing 5-50% by weight of a diglyceride. Examples 1-3 contain only 2.4 wt. % of diglyceride while examples 7 and 8 contain only 10 wt. % of diglyceride. The fatty acid moieties of the glyceride are described as having 8-24 carbon atoms, not less than 70 wt% of which are unsaturated fatty acids (col. 8, lines 16-20). The diglyceride rich mixture is described as produced by transesterification of an unsaturated fatty acid-rich oil such as safflower oil, olive oil, cottonseed oil, corn oil, rapeseed oil, soybean oil, palm oil, sunflower oil, sesame oil, lard, beef tallow, fish oil, milk fat or their fractionated oils, random interesterified oils, hardened oils and transesterified oils (column 8, lines 22-29) Nowhere in the reference is it suggested to use as constituent fatty acids of the diglyceride, 15-100% by weight of ω 3 unsaturated fatty acids having less than 20 carbon atoms.

The examiner asserts on page 3 of the official action, that soybean oil and rapeseed oil would inherently provide a fatty acid composition which would produce a diglyceride having 15-100 wt% of ω 3 unsaturated fatty acids having less than 20 carbons.

Applicants respectfully submit that rapeseed oil would not inherently provide a fatty acid mixture which would produce a diglyceride component as claimed. As evidence that rapeseed oil would not produce a diglyceride component as claimed, the examiner's attention is directed to applicants' disclosure at pages 8 and 9 of the specification. Table 1, on page 9

illustrates that rapeseed oil has an ω 3 unsaturated fatty acid content of only 11.3% and therefore would not inherently produce a composition as claimed. Moreover, as there is no suggestion in the cited reference to adjust the content of ω 3 unsaturated fatty acids, it would not have been obvious to prepare a composition in which the ω 3 unsaturated fatty acid content of the diglyceride component was 15-100 wt.%.

In contrast, the present invention is directed to an oil-cooked or baked potato in which **the constituent fatty acids of the diglycerides** are 15-100% by weight of ω 3 unsaturated fatty acids having less than 20 carbon atoms. The claim limitation of 15-100 wt% **of the fatty acid constituents of the diglyceride** being ω 3 unsaturated fatty acids having less than 20 carbon atoms is **a claim limitation** which is nowhere disclosed or suggested in the cited prior art reference. Accordingly, the present invention is clearly neither anticipated nor made obvious from this reference and accordingly withdrawal of the rejection under 35 U.S.C. § 102(b) is respectfully requested.

Moreover, nowhere in the cited references is it suggested to have a composition which contains **both** 15-50 wt% of diglyceride **and** have the constituent fatty acid of the diglyceride contain 15-100 wt.% of ω 3 unsaturated fatty acids having less than 20 carbon atoms.

As noted above, the only example (example 7) in which a diglyceride composition is prepared from fatty acids, is only added to an oil composition in an amount of 10 wt.%, not an amount of 15 to 50 wt. % as claimed. Accordingly, even if the diglyceride of example 7 were to contain 15-100 wt.% of ω 3 unsaturated fatty acid having less than 20 carbon atoms (which it does not), there is no suggestion to formulate an oil or fat composition to contain from 15-50 wt. % of such a diglyceride composition. Therefore, the claimed invention is not rendered obvious by this reference and withdrawal of the rejection under 35 U.S.C. § 102(b) is respectfully requested.

The remaining bases cited by the examiner as evidence of obviousness do not cure the basic deficiencies of the primary reference.

The examiner relies on applicants' disclosure at page 1, line 25 as describing an amount of oil absorbed when oil cooking potatoes. Such a description does not suggest an oil composition in which the diglyceride component contains 15 to 100 wt.% of ω 3 unsaturated fatty acids having less than 20 carbon atoms.

Fennema has been cited, at table 8 on page 959, as asserting that the amount of linolenic acid which is contained in soybean oil and rapeseed oil.

Applicants respectfully submit that table 8 does not describe the linolenic acid and only describes the carbon number and the number of unsaturation units in the fatty acid component. The table provides no information as to the location of the unsaturation. For example the listing of C_{18:0} describes a C18 fatty acid which has **no units** of unsaturation. Table 8 indicates that there is 2 wt.% of C_{18:0} in each of soybean oil and canola oil. The listing of C_{18:1} describes a C18 fatty acid which has **one unit** of unsaturation. Table 8 indicates that there is 20 and 55 wt.% respectively of C_{18:1} in each of soybean oil and canola oil. The listing of C_{18:2} describes a C18 fatty acid which has **two units** of unsaturation. Table 8 indicates that there is 64 and 20 wt.% respectively of C_{18:2} in each of soybean oil and canola oil. The listing of C_{18:3} describes a C18 fatty acid which has **three units** of unsaturation. Table 8 indicates that there is 3 and 8 wt.% respectively of C_{18:3} in each of soybean oil and canola oil. In no case however, is there an indication of the location of unsaturation in the fatty acid chain. An ω 3 unsaturated fatty acid defines a fatty acid in which the first unit of unsaturation is the third carbon-carbon bond counting from the **end** of the chain most distant from the carboxyl group. Accordingly the mere identification of the degree of unsaturation is insufficient to describe the location of the units of unsaturation such that an ω 3 unsaturated fatty acid is simply not described by the information in Table 8. For at

least this reason, the additional information relied upon by the examiner fails to provide evidence that the claimed invention is either not novel or obvious.

The rejection of claim 9 under 35 U.S.C. § 112, second paragraph has been obvious by appropriate amendment.

Applicants have now amended claim 9 to recite that the composition is based on **diglyceride** and not monoglyceride. This claim is fully supported by the disclosure on page 5, lines 4-6. In view of Applicants' amendment, withdrawal of this ground of rejection is respectfully requested.

Applicants note the examiner's objection to the abstract of the disclosure as containing two separate paragraphs.

Applicants note that Applicants' abstract complies with 37 CFR 1.72 in so far as it appears on a separate sheet, has the heading "ABSTRACT" and does not exceed 150 words in length. Applicants' abstract enables the USPTO and the public to generally determine quickly the nature and gist of the technical disclosure. As applicants' abstract complies with the rules, no changes are necessary.

Moreover, MPEP 608.01(b) states under the subheading "Language and Format" that the abstract should be....**generally** limited to a single paragraph...(emphasis added) and therefore there is no prohibition of the abstract being more than one paragraph. Withdrawal of the examiner's objection is respectfully requested.

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Applicants submit this application is now in condition for allowance and early notification of such action is earnestly solicited.

Respectfully submitted,

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MAIER & NEUSTADT, P.C.

Norman F. Oblon

A handwritten signature in black ink, appearing to read "Richard L. Chinn". The signature is fluid and cursive, with a large initial "R" and a stylized "L" and "C".

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